

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
SATELLITE SIGNALS OF)	File No. 0001906273
NEW ENGLAND, INC.)	
)	
Application For Reinstatement and Renewal of)	
Broadband Radio Service Station WMH560,)	
Lyndonville, Vermont)	

MEMORANDUM OPINION AND ORDER

Adopted: January 24, 2007

Released: January 25, 2007

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* we address the application of Satellite Signals of New England, Inc. (Satellite Signals) for renewal and reinstatement of Broadband Radio Service (BRS)¹ Station WMH560, Lyndonville, Vermont and associated request for waiver to allow consideration of the late-filed renewal application.² For the reasons set forth below, we grant Satellite Signals' Waiver Request and direct the licensing staff of the Broadband Division to process the renewal application.

II. BACKGROUND

2. Satellite Signals is the licensee for Station WMH560, Lyndonville, Vermont (the "License"). Satellite Signals was the licensee of three other stations in New England aside from Station WMH560, and had timely filed for renewal of these Former Licenses in March 2001.³ Satellite Signals

¹ On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that transforms the rules governing the Multipoint Distribution Service (MDS) and the Instructional Television Fixed Service (ITFS) in order to encourage the deployment of broadband services by commercial and educational entities. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*; WT Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*BRS/EBS Order*). To better reflect the forward-looking vision for these services, the Commission renamed MDS the Broadband Radio Service (BRS) and ITFS the Educational Broadband Service. Because the new rules have taken effect, we will refer to the service by its new name.

² Satellite Signals of New England, Inc., Petition for Reinstatement of BRS License WMH560, File No. 0001906273, filed Oct. 12, 2004 (Waiver Request).

³ See File Nos. BRMD-20010320AAM, BRMD-20010320AAN, BRMD-20010320AAO. The Commission granted the license renewal applications for Rutland, Vermont Stations WLK341 and WNTI856 on January 29, 2002, and the license renewal application for Cornwall, Vermont Station WMH308 on November 16, 2001. *See* Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Actions, Report No. 653, *Public Notice* (rel. Feb. 1, 2002) at 1; Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Actions, Report No. 588, *Public Notice* (rel. Nov. 21, 2001) at 1. These three stations will be referred to as the "Former Licenses." Satellite Signals subsequently assigned the Former Licenses to Wireless
(continued....)

was required to renew the license for Station WMH560 on the same date.⁴ However, Satellite Signals failed to file a timely renewal application for Station WMH560.⁵ It filed the renewal application on October 12, 2004.⁶

3. While Satellite Signals did not file a timely renewal for Station WMH560, it has given several reasons why this occurred. First, in 1992, Satellite Signals had leased Station WMH560 to New England Wireless, Inc. (New England Wireless), another wireless cable provider serving this rural Vermont area.⁷ Nick Sanguinetti, the main principal of Satellite Signals and manager of the license for Station WMH560, arranged the lease with New England Wireless.⁸ The station was constructed after it had been leased to New England Wireless.⁹ Second, around the time the renewal application for the License was due, Mr. Sanguinetti, described by Satellite Signals as the patriarch of the company, died.¹⁰ Finally, the company was involved in a bankruptcy controversy with Wireless Telecommunications and was focused on this “protracted legal battle” at the same time that the renewal was due and Mr. Sanguinetti died.¹¹ Subsequently, Satellite Signals received FCC consent to assign the Former Licenses to Wireless Telecommunications as debtor-in-possession. Satellite Signals has stated that if this request for renewal and reinstatement of the License is granted, it plans to also assign Station WMH560 to Wireless Telecommunications as part of the company’s bankruptcy reorganization.¹²

4. Satellite Signals notes that it had filed renewal applications on the Former Licenses, the License was constructed, and that Satellite Signals is current on its regulatory fee payments for the License.¹³ The company asserts that its failure to file a timely renewal application was inadvertent error. Satellite Signals postulates that Mr. Sanguinetti, who coordinated the lease of the License and had responsibility for coordinating with New England Wireless on all regulatory matters, had made an arrangement with New England Wireless regarding the renewal application for the License.¹⁴ Satellite Signals does not, however, have specific information regarding arrangements with New England Wireless or the status of the company’s operations with respect to the License.¹⁵ Satellite Signals notified the

(...continued from previous page)

Telecommunications, Inc., debtor-in-possession. (Wireless Telecommunications), consistent with the Commission’s August 24, 2004 grant of the assignment application submitted by Satellite Signals and Wireless Telecommunications. See File No. MD-20040622AAB; Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications Action, Report No. 1927, *Public Notice* (rel. Sep. 1, 2004) at 20.

⁴ See Waiver Request at 2.

⁵ *Id.*

⁶ File No. 0001906273.

⁷ Waiver Request at 2.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 2-3.

¹² *Id.* at 6.

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 3 n.9.

Commission of a temporary discontinuance of service provided by Station WMH560 on February 5, 2004, and requested a waiver and extension of the time permitted for resuming operation.¹⁶

5. Satellite Signals purports that there are compelling circumstances that support its request for partial waiver of Section 21.11(c) of the Commission's Rules and for reinstatement of its License *nunc pro tunc*. The company states that Satellite Signals and its lessee, New England Wireless, have been providing educational signals to the rural community for many years and that the License itself was built-out, operational and the spectrum associated with the license was never warehoused for future use or value.¹⁷ Furthermore, in order to ensure that future deadlines will not be missed, Satellite Signals has retained counsel to track all deadlines necessary to maintain its licenses. It notes that its counsel uses three systems to track such deadlines: (1) a computer calendar with automatic reminders of upcoming deadlines on a daily basis; (2) a paper tickler system; and (3) an Excel spreadsheet listing all deadlines imposed by the Commission which its counsel will review daily.¹⁸

6. Finally, Satellite Signals notes that the Commission has taken steps to provide BRS licensees with more flexibility in order to promote competition, innovation and investment in wireless broadband services. Satellite Signals believes that its plan to assign the License to Wireless Telecommunications would fulfill these public interest objectives.¹⁹ Satellite Signals and Wireless Telecommunications have entered into an Asset Purchase Agreement whereby Wireless Telecommunications would purchase all of Satellite Signals BRS licenses, including WMH560.²⁰ According to Satellite Signals, the sale, which has been designed to encompass as wide a geographic area as possible, would provide a greater chance to identify and secure a strong buyer who would build out the spectrum for the resulting larger territory. This in turn, according to the company, would promote the economic viability of BRS services and would fulfill the Commission's vision that the spectrum be as fungible, tradable and marketable as possible.²¹

III. DISCUSSION

7. Pursuant to former Section 21.11(c) of the Commission's Rules, licensees were required to file their renewal applications between thirty and sixty days prior to the license expiration date.²² If a licensee fails to file a timely renewal application, the licensee automatically forfeits the MDS station license as of the expiration date.²³ In the present case, Satellite Signals failed to timely file a renewal application but submits a request to waive Section 21.11(c) so that we may reinstate the license for Station WMH560 and consider Satellite Signals' renewal request.

¹⁶ *Id.* That request was granted on August 24, 2004. See Wireless Telecommunications Bureau's Broadband Division Grants Requests for Waiver of MDS and ITFS Discontinuance of Service Rules, *Public Notice*, 19 FCC Rcd 18752 (WTB BD 2004).

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 6.

²⁰ *Id.* at 6.

²¹ *Id.* at 7.

²² See 47 C.F.R. § 21.11(c) (2004). We note that this rule is no longer in effect for BRS services but because the Waiver Request was filed prior to January 10, 2005, when the rules adopted in the *BRS/EBS Order* took effect, we apply the old Part 21 rules to this case.

²³ *Burlington Cablevision, Inc., Order on Reconsideration*, 13 FCC Rcd 772 ¶ 7 (VSD MMB 1998) (hereinafter *Burlington*); *Superior Broadcasting Corporation, Memorandum Opinion and Order*, 7 FCC Rcd 7543 (DRB CCB 1992) (hereinafter *Superior*); see also 47 C.F.R. § 21.44 (2004).

8. Former Section 21.19 of the Commission's Rules, which applied at the time the Waiver Request was filed, permits the Commission to grant a waiver of its rules.²⁴ We may grant such a waiver if the purpose of the rule will not be served or would be frustrated by its application in the case and that grant of the waiver is otherwise in the public interest.²⁵ The Commission's MDS reinstatement rule (Section 21.11(c)) served two purposes: to ensure that parties will have a date certain after which they may file applications for an area covered by an expired license; and to ensure uninterrupted, authorized service to the public.²⁶ In determining whether to grant a late-filed renewal application, we take into consideration all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.

9. Taking into account all of the facts and circumstances of the instant matter, including the unique circumstances articulated in the Waiver Request, we conclude that Satellite Signals has made the requisite showing that grant of a waiver is warranted. We conclude that dismissal of the Satellite Signals' renewal application under this circumstance would be unduly harsh and contrary to public interest. In particular, we find the fact of Mr. Sanguinetti's death around the due date of the renewal application was a unique circumstance justifying a waiver. We find that circumstance sufficient to explain Satellite Signals failure to timely file. Therefore, we believe that it would be to the detriment of the public if we terminated the license and prevented the station from being used to provide service to this area of rural New England.

10. Notwithstanding our decision in this particular case, we caution that a licensee must abide by the Commission's filing deadlines. All licensees are responsible for filing renewal applications in a timely fashion. Thus, we admonish Satellite Signals to conform to this requirement in the future and to take any necessary steps to avoid future occurrences. The Commission does not routinely grant such waiver requests. With regard to taking necessary steps, we note that Satellite Signals has implemented procedures to ensure timely filings in the future.²⁷

11. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 22.11 and 21.19 of the Commission's Rules, 47 C.F.R. §§ 21.11, 21.19, the Petition for Reinstatement and the accompanying Request for Waiver filed by Satellite Signals of New England, Inc. on October 12, 2004 ARE GRANTED.

²⁴ See 47 C.F.R. § 21.19 (2004).

²⁵ *Id.*

²⁶ See *Burlington*, 13 FCC Rcd at 778 ¶ 16; see also *Superior Broadcasting*, 7 FCC Rcd at 7543 ¶ 4.

²⁷ *Id.* at 5.

12. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, that the licensing staff of the Broadband Division SHALL PROCESS the application for renewal of license filed by Satellite Signals of New England, Inc. (File No. 0001906273) in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau